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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/575,307	05/19/2000	Ernesto A. Brovelli	3086/1154 (PS0299)	1112
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28533	7590	02/01/2005		
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IN RE: ALTICOR INC. 28533  
BRINKS, HOFER, GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, IL 60610

EXAMINER
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MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 02/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

<b>Application No.</b> 09/575,307	<b>Applicant(s)</b> BROVELLI ET AL.	
<b>Examiner</b> Michael V. Meller	<b>Art Unit</b> 1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 03 January 2005.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-7, 12-16 and 18-20 is/are pending in the application.
  - 4a) Of the above claim(s) 1-6 and 12-16 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 7, 18-20 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/2004
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_

### DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6, 12-16 remain withdrawn from consideration for the reasons of record.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 needs a period.

Claim 19 is confusing because it is not clear what mg/ml refers to. It would be clearer if applicant relates the amount of fraction (mass of extract used) to the mass of the patient to which it is being administered to, otherwise it is not clear what mg/ml is really referring to.

Claim 20 is confusing because it is not clear how this claim further limits claim 18.

***Claim Rejections - 35 USC § 102***

Claims 7, 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Raskin et al. (paragraph 15 and page 29, left column).

Raskin teaches that the claimed extract is administered to a patient which has been extracted with chloroform. Applicant argues that the extract is not an acidic chloroform aerial extract, but as noted on page 3, paragraphs, 14-17, the extraction is done with acetic acid. The extraction is clearly done with chloroform on the leaf (aerial part).

***Claim Rejections - 35 USC § 103***

Claims 7, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Intelisano taken with Facino or Raskin et al.

Intelisano teaches that *Echinacea purpurea* extracts (fractions) are known to be administered for therapeutic purposes. Intelisano does not teach using the specific solvent chloroform.

Facino teaches to administer extracts of *Echinacea purpurea* root (page 1448). Facino also uses acidic chloroform to perform his extractions (page 1449).

Raskin teaches what is above.

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Thus, it would have been obvious to use chloroform to extract the fractions of Intelisano since Facino and Raskin both teach beneficial results using chloroform.

Applicant argues that they have unexpected results. In figure 2, the root fraction activity using acidic chloroform is lower than using petroleum ether. Because of this, the results are inconclusive. Further, the claims are not commensurate in scope with the declarations and evidence supplied by applicant.

To use the specific amounts claimed is simply routine optimization and would have been well within the purview of the skilled artisan.

Claims 7, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raskin et al. (paragraph 15 and page 29, left column).

Raskin teaches that the claimed extract is administered to a patient which has been extracted with acidic chloroform. See above arguments.

Applicant argues that they have unexpected results. In figure 2, the root fraction activity using acidic chloroform is lower than using petroleum ether. Because of this, the results are inconclusive. Further, the claims are not commensurate in scope with the declarations and evidence supplied by applicant.

To use the specific amounts claimed is simply routine optimization and would have been well within the purview of the skilled artisan.

Claims 7, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Facino et al.

Facino teaches to administer extracts of *Echinacea purpurea* root (page 1448). Facino also uses acidic chloroform to perform his extractions (page 1449).

Applicant argues that they have unexpected results. In figure 2, the root fraction activity using acidic chloroform is lower than using petroleum ether. Because of this, the results are inconclusive. Further, the claims are not commensurate in scope with the declarations and evidence supplied by applicant.

To use the specific amounts claimed is simply routine optimization and would have been well within the purview of the skilled artisan.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael V. Meller  
Primary Examiner  
Art Unit 1654

MVM